IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.Rev.Pet.No. 2606 of 2007()

CRA.185/2004 of ADDL.SESSIONS COURT (SPL.CAURT), KOTTAYAM
CC.273/1999 of JUDL. MAGISTRATE OF FIRST CLASS, KOTTAYAM

.....

REVN. PETITIONER: APPELLANT/ACCUSED:

C.T.BABY, S/O.CHACKO, AGED 64,
CHIRAYIL PAREKADAVIL HOUSE, PAKKIL P.O.,
NATTAKOM, KOTTAYAM.

BY ADV. SRI.JAISON PALIYIL
SRI.PRASUN.S

RESPONDENTS: RESPONDENT/COMPLAINANT/STATE:

---

1. RAJAN MATHEW, PROPRIETOR, M.M.MARBLES,
PAMPADY, KOTTAYAM.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2606 OF 2007 A

Dated this the 9th day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.273/1999 on the file of the J.F.C.M.-I, Kottayam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. The contention of the revision petitioner that the

cheque was issued under duress from the Police Station so as to enable the revision petitioner to get his son released from police custody was not accepted by the lower appellate court as a defence. In fact, the case originally ended in acquittal of the revision petitioner by the trial court which held that the prosecution under section 138 of the Negotiable Instruments Act would not lie since the liability was not that of the revision petitioner but that of his son. In Crl.Appeal No.1171/2001 filed by the complainant, this court did not accept the said defence as a ground to acquit the revision petitioner. The revision petitioner had no contention before this court that the cheque was bad for want of consideration since it was executed under duress from the Police Station. Having not attempted to support the acquittal by raising this ground, the revision petitioner was really precluded from putting forward the above ground before the lower appellate court which has rightly come to the finding that the prosecution under section 138 of the N.I. Act is clearly sustainable. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to

whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the appellant provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.58,980/- (Rupees fifty eight thousand nine hundred and eighty only) within two months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

aks